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SENATE BILL 292

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Steve Komadina

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO BEHAVIORAL HEALTH; ESTABLISHING AN INTERAGENCY  
BEHAVIORAL HEALTH PURCHASING COLLABORATIVE AND A BEHAVIORAL  
HEALTH PLANNING COUNCIL; PRESCRIBING POWERS, DUTIES AND  
MEMBERSHIP; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION  
OF LAW IN LAWS 2003.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public Health Act is  
enacted to read:

"[NEW MATERIAL] BEHAVIORAL HEALTH PLANNING COUNCIL  
CREATED--POWERS AND DUTIES--MEMBERSHIP.--There is created the  
"behavioral health planning council".

A. The council shall consist of the following  
members, all of whom shall be appointed by and serve at the  
pleasure of the governor:

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- 1 (1) consumers of behavioral health services  
2 and consumers of substance abuse services, as follows:  
3 (a) adults with serious mental illness;  
4 (b) seniors;  
5 (c) family members of adults with  
6 serious mental illness and of children with serious emotional  
7 or neurobiological disorders;  
8 (d) persons with co-occurring disorders;  
9 and  
10 (e) Native American representatives from  
11 a pueblo, an Apache tribe, the Navajo Nation and an urban  
12 Native American population;  
13 (2) providers;  
14 (3) state agency representation from agencies  
15 responsible for:  
16 (a) adult mental health and substance  
17 abuse;  
18 (b) children's mental health and  
19 substance abuse;  
20 (c) education;  
21 (d) vocational rehabilitation;  
22 (e) criminal justice;  
23 (f) juvenile justice;  
24 (g) housing;  
25 (h) medicaid and social services;

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- 1 (i) health policy planning;
- 2 (j) developmental disabilities planning;
- 3 and
- 4 (k) disabilities issues and advocacy;
- 5 (4) such other members as the governor may
- 6 appoint to ensure appropriate cultural and geographic
- 7 representation; and
- 8 (5) advocates.

9 B. Providers and state agency representatives  
10 together may not constitute more than forty-nine percent of the  
11 council membership.

12 C. The council shall:

- 13 (1) advocate for adults, children and
- 14 adolescents with serious mental illness or severe emotional,
- 15 neurological and behavioral disorders, as well as those with
- 16 mental illness or emotional problems, including substance abuse
- 17 and co-occurring disorders;
- 18 (2) report annually to the governor and the
- 19 legislature on the adequacy and allocation of mental health
- 20 services throughout the state;
- 21 (3) encourage and support the development of a
- 22 comprehensive, integrated, community-based behavioral health
- 23 system of care, including mental health and substance abuse
- 24 services, and services for persons with co-occurring disorders;
- 25 (4) advise state agencies responsible for

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1 behavioral health services for children and adults, as those  
2 agencies are charged in Section 9-7-6.4 NMSA 1978;

3 (5) meet regularly and at the call of the  
4 chair, who shall be appointed by the governor;

5 (6) establish subcommittees, to meet at least  
6 quarterly, as follows:

7 (a) a medicaid subcommittee, chaired by  
8 the secretary of human services or a designee, which may also  
9 serve as a subcommittee of the medicaid advisory committee;

10 (b) a child and adolescent subcommittee,  
11 chaired by the secretary of children, youth and families or a  
12 designee;

13 (c) an adult subcommittee, chaired by  
14 the secretary of health or a designee;

15 (d) a substance abuse subcommittee,  
16 chaired by the secretary of health or a designee, which shall  
17 include DWI issues and shall include representation from local  
18 DWI councils; and

19 (e) other subcommittees as may be  
20 established by the chair of the council to address specific  
21 issues. All subcommittees may include nonvoting members  
22 appointed by the chair for purposes of providing expertise  
23 necessary to the charge of the respective subcommittee;

24 (7) review and make recommendations for the  
25 comprehensive mental health state block grant and the substance

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1 abuse block grant applications, the state plan for medicaid  
2 services and any other plan or application for federal or  
3 foundation funding for behavioral health services; and

4 (8) replace the governor's mental health  
5 planning council and act in accordance with Public Law 102-321  
6 of the federal Public Health Service Act."

7 Section 2. Section 9-2A-8 NMSA 1978 (being Laws 1992,  
8 Chapter 57, Section 8, as amended) is amended to read:

9 "9-2A-8. DEPARTMENT--ADDITIONAL DUTIES.--In addition to  
10 other duties provided by law or assigned to the department by  
11 the governor, the department shall:

12 A. develop priorities for department services and  
13 resources based on state policy and national best-practice  
14 standards and local considerations and priorities;

15 B. strengthen collaboration and coordination in  
16 state and local services for children, youth and families by  
17 integrating critical functions as appropriate, including  
18 service delivery and contracting for services across divisions  
19 and related agencies;

20 C. develop and maintain a statewide database,  
21 including client tracking of services for children, youth and  
22 families;

23 D. develop standards of service within the  
24 department that focus on prevention, monitoring and outcomes;

25 E. analyze policies of other departments that

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1 affect children, youth and families to encourage common  
2 contracting procedures, common service definitions and a  
3 uniform system of access;

4 F. enact regulations to control disposition and  
5 placement of children under the Children's Code, including  
6 regulations to limit or prohibit the out-of-state placement of  
7 children, including those who have developmental disabilities  
8 or emotional, neurobiological or behavioral disorders, when in-  
9 state alternatives are available;

10 G. develop reimbursement criteria for licensed  
11 child care centers and licensed home providers establishing  
12 that accreditation by a department-approved national  
13 accrediting body is sufficient qualification for the child care  
14 center or home provider to receive the highest reimbursement  
15 rate paid by the department;

16 H. assume and implement ~~[the lead]~~ responsibility  
17 ~~[among all departments]~~ for children's mental health and  
18 substance abuse ~~[treatment authority]~~ services in the state,  
19 coordinating with the human services department and the  
20 department of health;

21 I. assume and implement the lead responsibility  
22 among all departments for domestic violence services;

23 J. implement prevention and early intervention as a  
24 departmental focus; ~~[and]~~

25 K. conduct biennial assessments of service gaps and

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1 needs and establish outcome measurements to address those  
2 service gaps and needs, including recommendations from the  
3 governor's children's cabinet and the children, youth and  
4 families advisory committee; and

5 L. ensure that behavioral health services provided,  
6 including mental health and substance abuse services for  
7 children, adolescents and their families, shall be in  
8 compliance with requirements of Section 9-7-6.4 NMSA 1978."

9 Section 3. Section 9-3-5 NMSA 1978 (being Laws 1977,  
10 Chapter 257, Section 6, as amended) is amended to read:

11 "9-3-5. SECRETARY--DUTIES AND GENERAL POWERS.--

12 A. The secretary of corrections is responsible to  
13 the governor for the operation of the corrections department.  
14 It is his duty to manage all operations of the department and  
15 to administer and enforce the laws with which he or the  
16 department is charged.

17 B. To perform his duties, the secretary has every  
18 power expressly enumerated in the laws, whether granted to the  
19 secretary of the department or any division of the department,  
20 except where authority conferred upon any division [~~therein~~] is  
21 explicitly exempted from the secretary's authority by statute.  
22 In accordance with these provisions, the secretary shall:

23 (1) except as otherwise provided in the  
24 Corrections Department Act, exercise general supervisory and  
25 appointing authority over all department employees, subject to

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1 any applicable personnel laws and regulations;

2 (2) delegate authority to subordinates as he  
3 deems necessary and appropriate, clearly delineating such  
4 delegated authority and the limitations thereto;

5 (3) organize the department into those  
6 organizational units he deems will enable it to function most  
7 efficiently, subject to any provisions of law requiring or  
8 establishing specific organizational units;

9 (4) within the limitations of available  
10 appropriations and applicable laws, employ and fix the  
11 compensation of those persons necessary to discharge his  
12 duties;

13 (5) take administrative action by issuing  
14 orders and instructions, not inconsistent with the law, to  
15 assure implementation of and compliance with the provisions of  
16 law [~~with the~~] for whose administration or execution [~~of which~~]  
17 he is responsible and to enforce those orders and instructions  
18 by appropriate administrative action or actions in the courts;

19 (6) conduct research and studies that will  
20 improve the operations of the department and the provision of  
21 services to the citizens of the state;

22 (7) provide courses of instruction and  
23 practical training for employees of the department and other  
24 persons involved in the administration of programs with the  
25 objective of improving the operations and efficiency of

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1 administration;

2 (8) prepare an annual budget of the  
3 department;

4 (9) provide cooperation, at the request of  
5 heads of administratively attached agencies, in order to:

6 (a) minimize or eliminate duplication of  
7 services and jurisdictional conflicts;

8 (b) coordinate activities and resolve  
9 problems of mutual concern; and

10 (c) resolve by agreement the manner and  
11 extent to which the department shall provide budgeting, record-  
12 keeping and related clerical assistance to administratively  
13 attached agencies;

14 (10) appoint, with the governor's consent, a  
15 "director" for each division [~~a "director"~~]. These appointed  
16 positions are exempt from the provisions of the Personnel Act.  
17 Persons appointed to these positions shall serve at the  
18 pleasure of the secretary;

19 (11) give bond as provided in the Surety Bond  
20 Act. The department shall pay the costs of [~~such~~] the bonds;  
21 and

22 (12) require performance bonds of such  
23 department employees and officers as he deems necessary, as  
24 provided in the Surety Bond Act. The department shall pay the  
25 costs of [~~such~~] the bonds.

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1           C. The secretary may apply for and receive, with  
2 the governor's approval, in the name of the department any  
3 public or private funds, including [~~but not limited to~~] United  
4 States government funds, available to the department to carry  
5 out its programs, duties or services.

6           D. Where functions of departments overlap or a  
7 function assigned to one department could better be performed  
8 by another department, a secretary may recommend appropriate  
9 legislation to the next session of the legislature for its  
10 approval.

11           E. The secretary may make and adopt such reasonable  
12 and procedural rules and regulations as may be necessary to  
13 carry out the duties of the department and its divisions. No  
14 rule or regulation promulgated by the director of any division  
15 in carrying out the functions and duties of the division shall  
16 be effective until approved by the secretary. Unless otherwise  
17 provided by statute, no regulation affecting any person or  
18 agency outside the department shall be adopted, amended or  
19 repealed without a public hearing on the proposed action before  
20 the secretary or a hearing officer designated by him. The  
21 public hearing shall be held in Santa Fe unless otherwise  
22 permitted by statute. Notice of the subject matter of the  
23 regulation, the action proposed to be taken, the time and place  
24 of the hearing, the manner in which interested persons may  
25 present their views and the method by which copies of the

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1 proposed regulation, proposed amendment or repeal of an  
2 existing regulation may be obtained shall be published once at  
3 least thirty days prior to the hearing date in a newspaper of  
4 general circulation and mailed at least thirty days prior to  
5 the hearing date to all persons who have made a written request  
6 for advance notice of hearing. All rules and regulations shall  
7 be filed in accordance with the State Rules Act.

8 F. Behavioral health services, including mental  
9 health and substance abuse services, provided by the department  
10 for persons under the department's supervision shall be in  
11 compliance with the requirements of Section 9-7-6.4 NMSA 1978."

12 Section 4. Section 9-7-3 NMSA 1978 (being Laws 1977,  
13 Chapter 253, Section 3, as amended) is amended to read:

14 "9-7-3. PURPOSE.--The purpose of the Department of Health  
15 Act is to establish a single, unified department to administer  
16 the laws and exercise the functions relating to health formerly  
17 administered and exercised by various organizational units of  
18 state government, including the state health agency, the  
19 scientific laboratory system and an appropriate allocation of  
20 administrative support services of the health and social  
21 services department and the hospital and institutions  
22 department. All public health [~~behavioral health~~] and  
23 scientific laboratory functions formerly performed by the  
24 health and environment department shall be performed by the  
25 department [~~of health~~]. Behavioral health services, including

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1 mental health and substance abuse services, provided by or  
2 through the department shall be subject to the direction of the  
3 secretary and the provisions of Section 9-7-6.4 NMSA 1978."

4 Section 5. Section 9-7-6.1 NMSA 1978 (being Laws 1999,  
5 Chapter 270, Section 1) is amended to read:

6 "9-7-6.1. BEHAVIORAL HEALTH SERVICES--POWERS AND DUTIES  
7 OF THE DEPARTMENT OF HEALTH.--Subject to appropriation, the  
8 department [~~of health~~] shall:

9 A. contract for behavioral health treatment and  
10 support services, including mental health, alcoholism and other  
11 substance abuse services;

12 B. establish standards for the delivery of  
13 behavioral health services, including quality management and  
14 improvement, performance measures, accessibility and  
15 availability of services, utilization management, credentialing  
16 and recredentialing, rights and responsibilities of providers,  
17 preventive behavioral health services, clinical treatment and  
18 evaluation and the documentation and confidentiality of client  
19 records;

20 C. ensure that all behavioral health services,  
21 including mental health and substance abuse services, provided,  
22 contracted for or approved are in compliance with the  
23 requirements of Section 9-7-6.4 NMSA 1978;

24 D. assume responsibility for and implement adult  
25 mental health and substance abuse services in the state

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1 coordinating with the human services department and the  
2 children, youth and families department;

3 [G-] E. establish criteria for determining  
4 individual eligibility for behavioral health services; and

5 [D-] F. maintain a management information system in  
6 accordance with standards for reporting clinical and fiscal  
7 information."

8 Section 6. Section 9-7-6.2 NMSA 1978 (being Laws 1999,  
9 Chapter 270, Section 2) is amended to read:

10 "9-7-6.2. CONTRACT ELIGIBILITY.--Subject to the  
11 provisions of Section 9-7-6.4 NMSA 1978, the department [~~of~~  
12 ~~health~~] may enter into contracts for behavioral health services  
13 with municipalities, counties, state institutions of higher  
14 education, tribal or pueblo governments or organizations,  
15 regional provider service networks or private nonprofit or for-  
16 profit corporations authorized to do business in New Mexico."

17 Section 7. A new section of the Department of Health Act,  
18 Section 9-7-6.4 NMSA 1978, is enacted to read:

19 "9-7-6.4. [NEW MATERIAL] INTERAGENCY BEHAVIORAL HEALTH  
20 PURCHASING COLLABORATIVE.--

21 A. There is created the "interagency behavioral  
22 health purchasing collaborative", consisting of the secretaries  
23 of human services, health, corrections, children, youth and  
24 families, finance and administration, labor, public education  
25 and transportation; the directors of the state agency on aging,

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1 the administrative office of the courts, the New Mexico office  
2 of Indian affairs, the New Mexico mortgage finance authority,  
3 the governor's committee on concerns of the handicapped, the  
4 developmental disabilities planning council, the vocational  
5 rehabilitation division of the public education department and  
6 the New Mexico health policy commission; and the governor's  
7 health policy coordinator, or their designees. The  
8 collaborative shall be chaired by the secretary of human  
9 services with the respective secretaries of health and  
10 children, youth and families alternating annually as co-chairs.

11 B. The collaborative shall meet regularly and at  
12 the call of either co-chair and shall:

13 (1) identify behavioral health needs  
14 statewide, with an emphasis on that hiatus between needs and  
15 services set forth in the department of health's gap analysis  
16 and in on-going needs assessments, and develop a master plan  
17 for statewide delivery of services;

18 (2) inventory all expenditures for behavioral  
19 health, including mental health and substance abuse;

20 (3) plan, design and direct a statewide  
21 behavioral health system, ensuring both availability of  
22 services and efficient use of all behavioral health funding,  
23 taking into consideration funding appropriated to specific  
24 affected departments; and

25 (4) contract for operation of one or more

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1 behavioral health entities to ensure availability of services  
2 throughout the state.

3 C. The plan for delivery of behavioral health  
4 services shall include specific service plans to address the  
5 needs of infants, children, adolescents, adults and seniors as  
6 well as to address workforce development and retention and  
7 quality improvement issues. The plan shall be revised every  
8 two years and shall be adopted by the department of health as  
9 part of the statewide health plan.

10 D. The plan shall take the following principles  
11 into consideration, to the extent practicable and within  
12 available resources:

13 (1) services should be individually centered  
14 and family focused based on principles of individual capacity  
15 for recovery and resiliency;

16 (2) services should be delivered in a  
17 culturally responsive manner in a home or community-based  
18 setting, where possible;

19 (3) services should be delivered in the least  
20 restrictive and most appropriate manner;

21 (4) individualized service planning and case  
22 management should take into consideration individual and family  
23 circumstances, abilities and strengths and be accomplished in  
24 consultation with appropriate family, caregivers and other  
25 persons critical to the individual's life and well-being;

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1 (5) services should be coordinated,  
2 accessible, accountable and of high quality;

3 (6) services should be directed by the  
4 individual or family served to the extent possible;

5 (7) services may be consumer or family  
6 provided, as defined by the collaborative; and

7 (8) services should include behavioral health  
8 promotion, prevention, early intervention, treatment and  
9 community support.

10 E. The collaborative shall seek and consider  
11 suggestions of Native American representatives from Indian  
12 nations, tribes, pueblos and the urban Indian population,  
13 located wholly or partially within New Mexico, in the  
14 development of the plan for delivery of behavioral health  
15 services."

16 Section 8. Section 9-8-6 NMSA 1978 (being Laws 1977,  
17 Chapter 252, Section 7, as amended) is amended to read:

18 "9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

19 A. The secretary is responsible to the governor for  
20 the operation of the department. It is his duty to manage all  
21 operations of the department and to administer and enforce the  
22 laws with which he or the department is charged.

23 B. To perform his duties, the secretary has every  
24 power expressly enumerated in the laws, whether granted to the  
25 secretary or the department or any division of the department,

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1       except where authority conferred upon any division is  
2       explicitly exempted from the secretary's authority by statute.

3       In accordance with these provisions, the secretary shall:

4               (1)   except as otherwise provided in the Human  
5       Services Department Act, exercise general supervisory and  
6       appointing authority over all department employees, subject to  
7       any applicable personnel laws and regulations;

8               (2)   delegate authority to subordinates as he  
9       deems necessary and appropriate, clearly delineating such  
10      delegated authority and the limitations thereto;

11              (3)   organize the department into those  
12      organizational units he deems will enable it to function most  
13      efficiently, subject to any provisions of law requiring or  
14      establishing specific organizational units;

15              (4)   within the limitations of available  
16      appropriations and applicable laws, employ and fix the  
17      compensation of those persons necessary to discharge his  
18      duties;

19              (5)   take administrative action by issuing  
20      orders and instructions, not inconsistent with the law, to  
21      assure implementation of and compliance with the provisions of  
22      law for whose administration or execution he is responsible and  
23      to enforce those orders and instructions by appropriate  
24      administrative action in the courts;

25              (6)   conduct research and studies that will

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1 improve the operations of the department and the provision of  
2 services to the citizens of the state;

3 (7) provide courses of instruction and  
4 practical training for employees of the department and other  
5 persons involved in the administration of programs with the  
6 objective of improving the operations and efficiency of  
7 administration;

8 (8) prepare an annual budget of the  
9 department;

10 (9) provide cooperation, at the request of  
11 heads of administratively attached agencies, in order to:

12 (a) minimize or eliminate duplication of  
13 services and jurisdictional conflicts;

14 (b) coordinate activities and resolve  
15 problems of mutual concern; and

16 (c) resolve by agreement the manner and  
17 extent to which the department shall provide budgeting,  
18 record-keeping and related clerical assistance to  
19 administratively attached agencies;

20 (10) appoint, with the governor's consent, a  
21 "director" for each division. These appointed positions are  
22 exempt from the provisions of the Personnel Act. Persons  
23 appointed to these positions shall serve at the pleasure of the  
24 secretary, except as provided in Section 9-8-9 NMSA 1978;

25 (11) give bond in the penal sum of twenty-five

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1 thousand dollars (\$25,000) and require directors to each give  
2 bond in the penal sum of ten thousand dollars (\$10,000)  
3 conditioned upon the faithful performance of duties as provided  
4 in the Surety Bond Act. The department shall pay the costs of  
5 these bonds; and

6 (12) require performance bonds of such  
7 department employees and officers as he deems necessary as  
8 provided in the Surety Bond Act. The department shall pay the  
9 costs of these bonds.

10 C. The secretary may apply for and receive, with  
11 the governor's approval, in the name of the department, any  
12 public or private funds, including ~~[but not limited to]~~ United  
13 States government funds, available to the department to carry  
14 out its programs, duties or services.

15 D. Where functions of departments overlap or a  
16 function assigned to one department could better be performed  
17 by another department, the secretary may recommend appropriate  
18 legislation to the next session of the legislature for its  
19 approval.

20 E. The secretary may make and adopt such reasonable  
21 and procedural rules and regulations as may be necessary to  
22 carry out the duties of the department and its divisions. No  
23 rule or regulation promulgated by the director of any division  
24 in carrying out the functions and duties of the division shall  
25 be effective until approved by the secretary unless otherwise

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1 provided by statute. Unless otherwise provided by statute, no  
2 regulation affecting any person or agency outside the  
3 department shall be adopted, amended or repealed without a  
4 public hearing on the proposed action before the secretary or a  
5 hearing officer designated by him. The public hearing shall be  
6 held in Santa Fe unless otherwise permitted by statute. Notice  
7 of the subject matter of the regulation, the action proposed to  
8 be taken, the time and place of the hearing, the manner in  
9 which interested persons may present their views and the method  
10 by which copies of the proposed regulation, proposed amendment  
11 or repeal of an existing regulation may be obtained shall be  
12 published once at least thirty days prior to the hearing date  
13 in a newspaper of general circulation and mailed at least  
14 thirty days prior to the hearing date to all persons who have  
15 made a written request for advance notice of hearing.

16 F. In the event the secretary anticipates that  
17 adoption, amendment or repeal of a rule or regulation will be  
18 required by a cancellation, reduction or suspension of federal  
19 funds or order by a court of competent jurisdiction:

20 (1) if the secretary is notified by  
21 appropriate federal authorities at least sixty days prior to  
22 the effective date of such cancellation, reduction or  
23 termination of federal funds, the department is required to  
24 promulgate regulations through the public hearing process to be  
25 effective on the date mandated by the appropriate federal

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1 authority; or

2 (2) if the secretary is notified by  
3 appropriate federal authorities or court less than sixty days  
4 prior to the effective date of such cancellation, reduction or  
5 suspension of federal funds or court order, the department is  
6 authorized without a public hearing to promulgate interim rules  
7 or regulations effective for a period not to exceed ninety  
8 days. [~~Such~~] Interim regulations shall not be promulgated  
9 without first providing a written notice twenty days in advance  
10 to providers of medical or behavioral health services and  
11 beneficiaries of department programs. At the time of the  
12 promulgation of the interim rules or regulations, the  
13 department shall give notice of the public hearing on the final  
14 rules or regulations in accordance with Subsection E of this  
15 section.

16 G. If the secretary certifies to the secretary of  
17 finance and administration and gives contemporaneous notice of  
18 such certification through the human services register that the  
19 department has insufficient state funds to operate any of the  
20 programs it administers and that reductions in services or  
21 benefit levels are necessary, the secretary may engage in  
22 interim rulemaking. Notwithstanding any provision to the  
23 contrary in the State Rules Act, interim rulemaking shall be  
24 conducted pursuant to Subsection E of this section, except:

25 (1) the period of notice of public hearing

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1 shall be fifteen days;

2 (2) the department shall also send individual  
3 notices of the interim rulemaking and of the public hearing to  
4 affected providers and beneficiaries;

5 (3) rules and regulations promulgated ~~[under]~~  
6 pursuant to the provisions of this subsection shall be in  
7 effect not less than five days after the public hearing;

8 (4) rules and regulations promulgated ~~[under]~~  
9 pursuant to the provisions of this subsection shall not be in  
10 effect for more than ninety days; and

11 (5) if final rules and regulations are  
12 necessary to replace the interim rules and regulations, the  
13 department shall give notice of intent to promulgate final  
14 rules and regulations at the time of notice herein. The final  
15 rules and regulations shall be promulgated not more than forty-  
16 five days after the public hearing and filed in accordance with  
17 the State Rules Act.

18 H. At the time of the promulgation of the interim  
19 rules or regulations, the department shall give notice of the  
20 public hearing on the final rules or regulations in accordance  
21 with Subsection E of this section.

22 I. The secretary shall ensure that any behavioral  
23 health services, including mental health and substance abuse  
24 services, provided, contracted for or approved are in  
25 compliance with the requirements of Section 9-7-6.4 NMSA 1978.

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1           [H.] J. All rules and regulations shall be filed in  
2 accordance with the State Rules Act."

3           Section 9. Section 22-2-6 NMSA 1978 (being Laws 1967,  
4 Chapter 16, Section 9, as amended) is amended to read:

5           "22-2-6. DEPARTMENT--DUTIES.--~~[Subject to the policies of~~  
6 ~~the state board and the supervision and direction of the state~~  
7 ~~superintendent]~~ The department shall have the following  
8 duties:

9           A. supervise all schools and school officials  
10 coming under the jurisdiction of the ~~[state board]~~ department,  
11 including taking over the control and management of a public  
12 school or school district that has failed to meet requirements  
13 of law or ~~[state board]~~ department rules or standards;

14           B. issue a state identification number for each  
15 public school student for use in the accountability data  
16 system;

17           C. advise boards of regents of state educational  
18 institutions on matters concerning the Public School Code;

19           D. prescribe, print and distribute forms to carry  
20 out the duties of the ~~[state board]~~ department pursuant to the  
21 Public School Code;

22           E. annually, prior to December 1, prepare and  
23 publish a report on public and private education in the state  
24 and distribute the report to the governor and the legislature;

25           F. keep accurate records of all money received by

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1 the ~~[state superintendent or the]~~ department;

2 G. publish and distribute copies of the Public  
3 School Code and rules promulgated by the ~~[state board]~~  
4 department to local school boards in the state;

5 H. confer with local school boards and licensed  
6 school employees on matters concerning education in the state;

7 I. prepare and distribute patriotic material to  
8 schools in the state; ~~[and]~~

9 J. evaluate all educational programs in state  
10 institutions under the authority of the secretary of health and  
11 the secretary of children, youth and families; and

12 K. ensure that all behavioral health services,  
13 including mental health and substance abuse services, provided,  
14 contracted for or approved by the department are in compliance  
15 with requirements of Section 9-7-6.4 NMSA 1978."

16 Section 10. Section 22-14-8 NMSA 1978 (being Laws 1967,  
17 Chapter 16, Section 197, as amended by Laws 1993, Chapter 226,  
18 Section 31 and also by Laws 1993, Chapter 229, Section 2) is  
19 amended to read:

20 "22-14-8. VOCATIONAL REHABILITATION DIVISION--POWERS--  
21 DUTIES.--~~[Subject to the policies of the state board]~~ The  
22 vocational rehabilitation division of the public education  
23 department shall:

24 A. provide vocational rehabilitation to qualified  
25 individuals;

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1           B. ~~[act as the representative of the state board in~~  
2 ~~administering]~~ administer any state plan or federal aid funds  
3 relating to vocational rehabilitation;

4           C. cooperate and make agreements with public or  
5 private agencies to establish or to maintain a vocational  
6 rehabilitation program;

7           D. enter into reciprocal agreements with other  
8 states to provide vocational rehabilitation;

9           E. accept gifts or grants to be used for vocational  
10 rehabilitation;

11           F. ~~[adopt]~~ enforce regulations for the  
12 administration of laws relating to vocational rehabilitation;  
13 ~~[and]~~

14           G. conduct research and compile statistics relating  
15 to vocational rehabilitation; and

16           H. ensure that behavioral health services,  
17 including mental health and substance abuse services, provided,  
18 contracted for or approved are in compliance with the  
19 requirements of Section 9-7-6.4 NMSA 1978."

20           Section 11. Section 28-4-6 NMSA 1978 (being Laws 1979,  
21 Chapter 203, Section 3, as amended) is amended to read:

22           "28-4-6. AGENCY POWERS.--

23           A. The state agency on aging:

24                   (1) may receive on behalf of the state any  
25 gifts, donations or bequests from any source to be used in

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1 carrying out its duties; and

2 (2) is designated as the state agency for  
3 handling all programs of the federal government related to the  
4 aged, except those designated by law as the responsibility of  
5 another state agency, and may enter into agreements and  
6 contracts with agencies of the federal government for this  
7 purpose.

8 B. The state agency on aging may adopt and  
9 promulgate [~~such~~] reasonable rules [~~and regulations~~] as are  
10 deemed necessary to carry out its duties. Unless otherwise  
11 provided by law, no rule [~~or regulation~~] affecting any person  
12 or agency outside the state agency on aging shall be adopted,  
13 amended or repealed without a public hearing on the proposed  
14 action before the director of the state agency on aging or a  
15 hearing officer designated by him. The public hearing shall be  
16 held in Santa Fe unless otherwise permitted by statute. Notice  
17 of the subject matter of the rule [~~or regulation~~], the action  
18 proposed to be taken, the time and place of the hearing, the  
19 manner in which interested persons may present their views and  
20 the method by which copies of the proposed rule [~~or regulation~~]  
21 or proposed amendment or repeal of an existing rule [~~or~~  
22 ~~regulation~~] may be obtained shall be published once at least  
23 thirty days prior to the hearing in a newspaper of general  
24 circulation and mailed at least thirty days prior to the  
25 hearing date to all persons who have made a written request for

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1 advance notice of hearing. The director of the state agency on  
2 aging shall also provide [~~such~~] notice to the director of each  
3 senior citizen center no later than forty days prior to the  
4 public hearing. All rules [~~and regulations~~] shall be filed in  
5 accordance with the State Rules Act.

6 C. To ensure that the health and safety needs of  
7 the state's aged population are being met, the state agency on  
8 aging may conduct unannounced quality care evaluations of  
9 health and long-term care facilities that provide services to  
10 the aged, including the use of undercover patients or  
11 employees. Any employee or contractor of the state agency on  
12 aging who participates in such an evaluation shall be immune  
13 from liability in any civil action related to the evaluation,  
14 provided it is conducted in good faith. The purpose of this  
15 subsection is to confirm and clarify the authority of the state  
16 agency on aging to conduct quality care evaluations to protect  
17 the interests of the state's aged population.

18 D. The agency shall ensure that any behavioral  
19 health services, including mental health and substance abuse  
20 services, provided, contracted for or approved are in  
21 compliance with the requirements of Section 9-7-6.4 NMSA 1978."

22 Section 12. Section 28-12-7 NMSA 1978 (being Laws 1955,  
23 Chapter 162, Section 4, as amended) is amended to read:

24 "28-12-7. POWERS AND DUTIES OF COMMISSION.--

25 A. The commission [~~shall be~~] is the co-ordinating

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1 agency for intergovernmental programs concerning tribal  
2 governments and the state [~~of New Mexico~~].

3 B. The commission shall investigate, study,  
4 consider and act upon the entire subject of Indian conditions  
5 and relations within the state [~~of New Mexico~~], including but  
6 not restricted to problems of health, economy, education,  
7 legislation and local, state and federal government. In  
8 performing its functions, the commission shall provide an  
9 opportunity for the presentation and exchange of ideas in  
10 respect to Indian affairs of the state by all interested  
11 persons.

12 C. The commission shall assist in setting the  
13 policy [~~for~~] and shall act as the clearinghouse for all state  
14 programs affecting the Indian people of New Mexico.

15 D. The commission, in order to ensure the purposes  
16 of this section, may hold hearings, conduct meetings, make  
17 investigations and confer with officials of local, state and  
18 federal agencies in order to secure cooperation between the  
19 local, state, federal and Indian tribal governments in the  
20 promotion of the welfare of the Indian peoples.

21 E. The commission shall have the authority to  
22 accept and receive gifts, funds, grants, bequests and devises  
23 for use in furthering the purposes of the commission.

24 F. The commission may contract with public or  
25 private bodies to provide services and facilities for promoting

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1 the welfare of the Indian peoples.

2 G. The commission shall appoint the executive  
3 director or his designee to serve on the interagency behavioral  
4 health purchasing collaborative and shall ensure that all  
5 behavioral health services, including mental health and  
6 substance abuse services, provided, contracted for or approved  
7 by the commission are in compliance with the requirements of  
8 Section 9-7-6.4 NMSA 1978."

9 Section 13. Section 34-9-3 NMSA 1978 (being Laws 1959,  
10 Chapter 162, Section 3, as amended) is amended to read:

11 "34-9-3. DIRECTOR--DUTIES.--The director of the  
12 administrative office of the courts shall, under the  
13 supervision and direction of the supreme court:

14 A. supervise all matters relating to administration  
15 of the courts;

16 B. examine fiscal matters and the state of the  
17 dockets of the courts, secure information as to the courts'  
18 need of assistance and prepare and transmit to the supreme  
19 court statistical data and reports as to the business of the  
20 courts;

21 C. submit to the supreme court and to the  
22 legislature by January 30 of each year a report of the  
23 activities of the administrative office of the courts and of  
24 the state of business of the courts, including the statistical  
25 data submitted to the supreme court pursuant to Subsection B of

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1 this section, and the director's recommendations. This report  
2 is a public document;

3 D. deal with the problems of finance of those  
4 courts supported by legislative appropriation and be concerned  
5 with adequate but economical financing of each of these courts  
6 and the equitable distribution of available funds among them.  
7 For this purpose, the director shall receive, adjust and  
8 approve proposed budgets submitted by these courts [~~for the~~  
9 ~~fifty-eighth and subsequent fiscal years~~] prior to submission  
10 of the budgets to the state budget division of the department  
11 of finance and administration for inclusion in the executive  
12 budget. The district courts of all counties within a judicial  
13 district shall be included within a single budget. Budget  
14 proposals shall be submitted by the courts at the time and in  
15 the form prescribed by the director; [~~and~~]

16 E. perform other duties in aid of the  
17 administration of justice and the administration and dispatch  
18 of the business of the courts as directed by the supreme court.  
19 The courts shall comply with all requests of the director for  
20 information; and

21 F. ensure that any behavioral health services,  
22 including mental health and substance abuse services, provided,  
23 contracted for or approved by the office are in compliance with  
24 the requirements of Section 9-7-6.4 NMSA 1978."

25 Section 14. A new section of the Mortgage Finance

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1 Authority Act is enacted to read:

2 "[NEW MATERIAL] DUTIES--BEHAVIORAL HEALTH.--The authority  
3 shall:

4 A. appoint a representative to both the behavioral  
5 health planning council and the interagency behavioral health  
6 purchasing collaborative; and

7 B. ensure that any behavioral health services,  
8 including mental health and substance abuse services, and any  
9 housing provided for consumers of those services, that are  
10 provided, contracted for or approved by the authority are in  
11 compliance with requirements of Section 9-7-6.4 NMSA 1978."

12 Section 15. Section 67-3-8 NMSA 1978 (being Laws 1967,  
13 Chapter 226, Section 7, as amended) is amended to read:

14 "67-3-8. POWERS AND DUTIES OF SECRETARY.--The secretary  
15 shall:

16 A. serve as the chief staff officer of the state  
17 transportation commission and shall be responsible to the  
18 commission for the operations and management of the work of the  
19 department;

20 B. organize the department in such a manner as to  
21 properly conduct the work of the department;

22 C. establish six highway construction districts  
23 with the approval of the state transportation commission. The  
24 secretary shall designate a district engineer in each  
25 construction district to supervise and manage the operations of

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1 the district. The district engineer shall be a professional  
2 engineer. The authority and responsibility for the actual  
3 construction for all construction projects within the district  
4 shall be delegated to the district engineer. District  
5 engineers shall attend state transportation commission  
6 meetings;

7 D. in accordance with the provisions of the  
8 Personnel Act, employ such assistants and employees as may be  
9 required for the efficient operation of the department, each of  
10 whom shall possess all the qualifications that may be  
11 prescribed for such position; provided that, notwithstanding  
12 the provisions of the Personnel Act, no more than five division  
13 directors shall be covered by and subject to the Personnel Act;  
14 [~~and~~]

15 E. observe, administer and enforce the provisions  
16 of law now existing or hereafter enacted that pertain to the  
17 state highways, the state transportation commission or the  
18 department; and

19 F. ensure that any behavioral health services,  
20 including mental health and substance abuse services, provided,  
21 contracted for or approved are in compliance with the  
22 requirements of Section 9-7-6.4 NMSA 1978."

23 Section 16. REPEAL.--Section 24-1-26 NMSA 1978 (being  
24 Laws 2003, Chapter 59, Section 1) is repealed.

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